

## ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CA08-1347

ARKANSAS STATE BOARD OF  
EMBALMERS & FUNERAL  
DIRECTORS

APPELLANT

V.

KENYA RICHARDSON, DERRICK  
GUNN, ADRIANNE LOVE, and GUNN  
FUNERAL HOME

APPELLEES

**Opinion Delivered** JUNE 3, 2009

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT  
[NO. CV2008-4594]

HONORABLE ALICE S. GRAY,  
JUDGE

CIRCUIT COURT REVERSED;  
AGENCY AFFIRMED

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### LARRY D. VAUGHT, Chief Judge

This is an appeal from a circuit court's order reversing a decision of the Arkansas State Board of Embalmers and Funeral Directors ("Board"). The Board contends that substantial evidence exists to support its decision to sanction appellees Derrick Gunn, Kenya Richardson, Adrienne Love, and Gunn Funeral Home. We agree and affirm the Board's decision and reverse the circuit court.

The procedural history of this case is as follows. Here, the Board—an agency of the State of Arkansas with the statutory charge of regulating the funeral service profession—charged Gunn, Richardson, and Love with violating the funeral-director-licensing laws. Ark. Code Ann. § 17-29-101 (Repl. 2001). The Board is authorized to suspend or revoke licenses of funeral directors and embalmers by Arkansas Code Annotated section 17-29-311 (Repl. 2001), and revoke establishment licenses for violations of the

licensing law by section 17-29-307 (Repl. 2001). The Board is further authorized to impose a civil penalty not to exceed \$10,000 on persons who violate the statute and rules. Ark. Code Ann. § 17-29-403 (Repl. 2001). Based on its regulatory power, the Board charged that Richardson, a licensed funeral director, had not performed her requisite funeral-directing duties and that Gunn, a licensed embalmer, had violated Board Rule II (1) by acting as a funeral director. The rule provides:

Every funeral conducted within the State of Arkansas must be under the personal supervision and direction and charge of a funeral director who holds a valid license from this Board. To conduct a funeral shall require the direct personal supervision of a licensed funeral director until final disposition is completed.

On April 15, 2008, a hearing was held before the Board regarding the alleged impermissible activities of appellees. The Board concluded that all persons charged had violated various provisions of the funeral-director-licensing laws and regulations and imposed the following sanctions: the professional licenses of Richardson and Gunn were suspended for one year; a civil penalty of \$1000 was imposed on Gunn; a civil penalty of \$1500 was imposed on Richardson; Love was held accountable for the actions of her employees (Richardson and Gunn) and ordered to pay a \$1500 penalty; and the establishment license issued to the funeral home was placed on a two-year probation with an accompanying \$500 civil penalty.

Immediately following the Board's decision, a petition for judicial review was timely filed in circuit court. The circuit court granted a stay of the administrative order pending judicial review. The circuit court ultimately reversed the decision of the Board on the basis that its decision was not supported by substantial evidence. It is from that decision that the Board now appeals.

The standard of review in this area of the law is well developed. Our review is directed not toward the circuit court, but toward the decision of the agency. That is so because administrative agencies are better equipped by specialization, insight through experience, and more flexible procedures than courts, to determine and analyze legal issues affecting their agencies. *McQuay v. Ark. State Bd. of Architects*, 337 Ark. 339, 989 S.W.2d 499 (1999). As such, our review of administrative decisions is limited in scope. Such decisions will be upheld if they are supported by substantial evidence and are not arbitrary, capricious, or characterized by an abuse of discretion. *In re Sugarloaf Mining Co.*, 310 Ark. 772, 840 S.W.2d 172 (1992).

These standards are consistent with the provisions of the Administrative Procedure Act. Ark. Code Ann. §§ 25-15-201–25-15-214 (1996). According to the Act, it is not the role of the circuit courts or the appellate courts to conduct a de novo review of the record; rather, review is limited to ascertaining whether there is substantial evidence to support the agency’s decision or whether the agency’s decision runs afoul of one of the other criteria set out in section 25-15-212(h). *Ark. Bd. of Exam’rs v. Carlson*, 334 Ark. 614, 976 S.W.2d 934 (1998). We review the entire record in making this determination. *Id.* We also note that in reviewing the record, the evidence is given its strongest probative force in favor of the agency’s ruling. *Ark. Health Servs. Agency v. Desiderata, Inc.*, 331 Ark. 144, 958 S.W.2d 7 (1998). The Administrative Procedure Act states:

(g) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony may be taken before the court. The court shall, upon request, hear oral argument and receive written briefs.

(h) The court may affirm the decision of the agency or remand the case for further proceedings. It may reverse or modify the decision if the substantial rights of the

petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the agency's statutory authority;
- (3) Made upon unlawful procedure;
- (4) Affected by other error or law;
- (5) Not supported by substantial evidence of record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion.

Ark. Code Ann. § 25-15-212.

In our review of the record, we note the following evidence supporting the agency's decision. Carenda Brown testified that her terminally ill mother wanted her funeral arrangements to be handled by Derrick Gunn. On October 3, 2007, Brown met with Gunn about the impending funeral. However, at the time Gunn was only licensed as an embalmer. During the meeting, Brown inquired if she could begin paying—in advance—for her mother's funeral to help alleviate the financial burden the service would place on her family. At the meeting, Gunn recommended that she apply for insurance through a pre-paid, funeral-service company. On Gunn's recommendation, Brown signed a pre-paid, funeral-service contract.

When her mother died, on Friday, October 12, Carenda called Gunn. She notified him of her mother's death and inquired what she should do next. Gunn asked her to come to the funeral home to make specific arrangements. On the following Monday, Brown met with Kenya Richardson (the funeral director) and selected a casket, discussed flowers, and signed a funeral-arrangement agreement. Brown subsequently learned that her pre-paid funeral-service insurance was not in effect at the time of her mother's death. She was informed by Gunn that she needed to pay \$795 to Elmlawn Cemetery because the cemetery

company had to have the money “up-front” before it would begin to dig the grave. Gunn also agreed that Brown could make monthly payments of \$206 to the funeral home until her mother’s funeral was paid in full. At this time, Brown tendered cash to Gunn as partial payment for the funeral.

However, on the morning of the funeral, Brown was informed that her mother would not actually be buried that day. Brown began to enlist the help of other family members to help pay for the funeral-home fees and also learned that Gunn had made arrangements for the burial to take place in a cemetery other than the one she had originally selected. On April 2, 2008, Gunn signed a letter addressed to Brown stating she owed \$1700 to the funeral home.

At the hearing, Gunn testified that his conversations and negotiations with Brown had nothing to do with acting as a funeral director (a job for which he was not licensed) and that all he did was go over the pre-paid plan with her. Gunn also argued that the rule forbidding him to act as funeral director applies to only the funeral service. The Board rejected this overly narrow view and interpreted its own rule as covering conduct from the time of death until the final disposition as well as the actual funeral service at the church.

Kenya Richardson echoed Gunn’s position relating to his lack of substantial work on the funeral service. Richardson claimed there was no evidence that Gunn executed contracts for the funeral home or its services.<sup>1</sup> Contrary to Richardson’s version of events, Brown

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<sup>1</sup>Richardson also argued that there was no evidence that she aided or abetted an unlicensed person to practice funeral directing; however, this argument is a non-starter, because the statute does not have an intent or mens rea component.

testified that the only contact she had with Richardson was to select a casket. The rest of Brown's dealings in preparation for her mother's funeral were with Gunn. Furthermore, the evidence of the pre-paid funeral-service contract shows that Gunn did execute a contract with a benefit "in the form of funeral services."

Finally, Brown testified that when the actual burial finally took place, over a week after her mother's death, Richardson was not present at the burial. Richardson responded to the charge by noting by written statement that "Gunn Funeral Homes' staff did witness the burial and final disposition of Mrs. Bass." The Board found that because a "licensed funeral director from the Gunn Funeral Home did not stay at the cemetery until Mrs. Bass's Grave was closed" both "[Richardson] and [Love] are responsible for there not being a licensed funeral director at the cemetery in violation of Board Rule II(1) when they left the cemetery before the final disposition had been completed."

The members of the Board, as judges of the credibility of the witnesses, were free to credit the testimony of Brown over the testimony of Gunn and Richardson on these issues. *Bank of Yellville v. First Am. Sav. & Loan Ass'n*, 276 Ark. 292, 634 S.W.2d 122 (1982). Furthermore, based on Brown's testimony alone, there was more than substantial evidence to support the charges against Gunn, Richardson, and Love. The fact that the record may contain evidence to support a contrary finding is of no import when we are charged with reviewing a Board's decision for substantial evidence. *White Co. Guar. S&L v. Frms. & Mchts. Bk.*, 262 Ark. 893, 562 S.W.2d 582 (1978).

In this case, the circuit court improperly substituted its judgment for that of the Board. The fact that the trial court may have reached a different conclusion on the evidence is

irrelevant so long as the record supports the Board's conclusion. *Ark. Bd. Reg. F. Prof'l Geologist v. Ackley*, 64 Ark. App. 325, 984 S.W.2d 67 (1998). Because there is substantial evidence to support the conclusion that Gunn, Richardson, and Love violated rules of the administrative agency governing their profession, we affirm the decision of the Board.

KINARD and BROWN, JJ., agree.